रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 57] नई दिल्ली, मंगलवार, नवम्बर 2, 1982/कार्तिक 11, 1904
No. 57] NEW DELHI, TUESDAY, NOVEMBER 2, 1982/KARTIKA 11, 1904

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following report of the Joint Committee on the Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 was presented to Lok Sabha on 2 November, 1982:—

COMPOSITION OF THE COMMITTEE

Shri D. K. Naikar—*Chairman*

MEMBERS

Lok Sabha

2. Shri K. Arjunan
3. Shri Rasa Behari Behra
4. Shrimati Gurbrinder Kaur Brar
5. Shrimati Vidyavati Chaturvedi
6. Shri V. Kishore Chandra S. Deo
7. Shrimati Suseela Gopalan
8. *Shrimati Mohsina Kidwai
9. Shrimati Madhuri Singh
10. Shrimati Geeta Mukherjee
11. Shri K. S. Narayana
12. Shri Ram Pyare Panika
13. Shri Bapusaheb Parulekar
14. Shri Amrit Patel

*Resigned w. e. f. 14-9-1982.

15. Shri Qazi Saleem
16. Prof. Nirmala Kumari Shaktawat
17. **Shri N. K. Shejwalkar
18. Shri S. Singarvadival
19. Shri R. S. Sparrow
20. Shri Trilok Chand
21. Shri V. S. Vijayaraghavan
22. Shri P. Venkatasubbaiah

Rajya Sabha

23. @Shri Lal K. Advani
24. Shri Ramchandra Bharadwaj
25. Shri Amarprosad Chakraborty
26. Shri S. W. Dhabe
27. Shri B. Ibrahim
28. Shri Dhuleshwar Meena
29. Shri Surendra Mohanty
30. Shri V. P. Munusamy
31. £Shri Leonard Soliman Saring
32. Shri Era Sezhiyan
33. Shri Hukmdeo Narayan Yadav

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary.*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
3. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

LEGISLATIVE COUNSELS

1. Shri S. Ramaiah—*Joint Secretary and Legislative Counsel, Ministry of Law, Justice and Company Affairs (Legislative Department).*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel, Ministry of Law, Justice and Company Affairs (Legislative Department).*
3. Dr. Raghbir Singh—*Assistant Legislative Counsel, Ministry of Law, Justice and Company Affairs (Legislative Department).*

DRAFTSMAN (OFFICIAL LANGUAGES WING)

Shri R. B. Agarwal—*Deputy Draftsman, Ministry of Law, Justice and Company Affairs (Official Languages Wing).*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri P. K. Kathpalia—*Additional Secretary.*
2. Shri S. V. Sharan—*Joint Secretary.*

**Appointed *w. e. f.* 16.4.1982 *vice* Shri R. K Mhalgi expired.

@Ceased to be a member of the Committee *w. e. f.* 2.4.1982 on the expiry of his term in Rajya Sabha. Re-appointed *w. e. f.* 5.5.1982.

£Ceased to be a member of the Committee w. e. f. 19.10.1981 on the expiry of his term in Rajya Sabha. Re-appointed *w. e. f.* 17.12.1981.

REPORT OF THE JOINT COMMITTEE ON THE CRIMINAL LAW (AMENDMENT) BILL, 1980

I, the Chairman of the Joint Committee to which the Bill*, further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 was referred, having been authorised to submit the Report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 12th August, 1980. The motion for reference of the Bill to a Joint Committee of the Houses was moved in the Lok Sabha by Giani Zail Singh, the then Minister of Home Affairs on the 23rd December, 1980 and was adopted.

3. The Rajya Sabha concurred in the said motion on the 24th December, 1980.

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin—Part II on the 26th December, 1980.

5. The Committee held 44 sittings in all.

6. The first sitting of the Committee was held on the 3rd February, 1981 to draw up their future programme of work. The Committee at this sitting decided to invite memoranda on the provisions of the Bill from the State Governments, Union Territory Administrations, Public Bodies, Women's and Voluntary Social Organisations, Bar Associations/Councils, Press Organisations, individuals, etc. interested in the subject matter of the Bill by the 18th February, 1981 for their consideration with a view to facilitate the working of the Committee.

The Committee also decided to address a circular letter to the Chief Secretaries of all State Governments/Union Territory Administrations, Bar Associations/Councils, Press Organisations and Women's and Voluntary Social Organisations, Attorney General and Advocates General of all States inviting their comments/suggestions on the provisions of the Bill by the said date.

The Committee further decided to hear oral evidence on the provisions of the Bill from the interested parties including experts.

The Committee also decided to issue a Press Communique in this behalf fixing the 18th February, 1981 as the last date for receipt of memoranda and requests for giving oral evidence. On the 4th February, 1981, the Director General, All India Radio and the Director General, Doordarshan, New Delhi were also requested to broadcast the contents of the Press Communique from all stations of All India Radio and telecast it from all Doordarshan Kendras on three successive days.

*Published in the Gazette of India, Extraordinary, Part II, Section 2 dated the 12th August, 1980.

7. As a few memoranda were received by the 18th February, 1981 and several requests for extension of time for submission of memoranda had been received by the Lok Sabha Secretariat, the Chairman on the 21st February, 1981 extended the date for receiving memoranda etc. up to the 7th March, 1981. This was notified through a Press Communique issued by the Lok Sabha Secretariat on the 23rd February, 1981. The contents of the Press Communique were also given publicity through All India Radio and Doordarshan Kendras.

8. As sufficient number of memoranda had not been received, especially from the Women's Organisations at National level by the aforesaid extended date, the Committee at their sitting held on the 17th March, 1981 decided to further extend the time for submission of memoranda up to the 15th April, 1981. A Press Communique was again issued on the 19th March, 1981. The Director General, All India Radio and the Director General, Doordarshan, New Delhi were again requested to broadcast the matter from all Stations of All India Radio and telecast it from all Doordarshan Kendras.

At that sitting, the Committee also decided that all Members of Parliament and the District Bar Associations in the country be requested to send their comments/suggestions on the provisions of the Bill by the extended date, *i.e.*, the 15th April, 1981. Accordingly, Members of Parliament and the Presidents of all District Bar Associations in the country were requested to send their comments/suggestions by the aforesaid date.

9. 123 Memoranda|Representations containing views|comments|suggestions on the provisions of the Bill were received by the Committee from various State Governments, Public Bodies, Women's and Voluntary Social Organisations, etc.

10. In order to acquaint themselves with the growing problem of rape cases and to ascertain the facts and figures of the incidence of such cases in different States, particularly from those who were not in a position to come to Delhi, the Committee at their sitting held on the 29th April, 1981 decided to visit different States and hold series of sittings there for the purpose of taking oral evidence of the representatives of various Women's and Voluntary Social Organisations, Bar Councils/District Bar Associations, State Governments, etc.

11. Accordingly, the Committee held their formal sittings at Simla, Lucknow and Bhopal from the 30th June to the 7th July, 1981 in the first round; at Bombay, Hyderabad and Bangalore from the 27th July to the 2nd August, 1981 in the second round; and at Calcutta, Itanagar, Patna and Bhubaneswar from the 14th to the 23rd October, 1981 in the third round, and heard oral evidence of the representatives of various Women's and Voluntary Social Organisations, Bar Councils/District Bar Associations, State Governments/Union Territory Administrations and individuals, etc.

The Committee also took oral evidence of the representatives of various Women's and Voluntary Social Organisations, Delhi Administration, individuals, etc. at New Delhi on the 2nd and 3rd November, 1981.

12. 225 witnesses representing both officials and non-officials, *viz.*, Women's and Voluntary Social Organisations, Bar Councils/Associations, other organisations, individuals, etc. from a cross section of the society appeared before the Committee for tendering oral evidence.

13. At their sittings held from the 16th to 18th November, 1981 and again from the 8th to 11th February, 1982, the Committee held general discussion on the provisions of the Bill with reference to the amendments given notice of, and general suggestions made, by the members with a view to formulate their views and arrive at a consensus. During the general discussion, it was suggested by some members of the Committee that as to whether the Minister of State for Home Affairs was prepared to bring forward any Government amendments based on the views expressed by them during the discussion. Accordingly, the Minister of State for Home Affairs expressed his willingness to bring forward Government amendments for consideration of the Committee.

14. At their sitting held on the 8th February, 1982, the Committee decided that the Record of Evidence tendered before the Committee at New Delhi and other places might be printed and laid on the Table of both the Houses of Parliament.

15. The Report of the Committee was to be presented to the House by the last day of the first week of the next Session (Budget Session, 1981), *i.e.* by the 20th February, 1981. The Committee were granted five extensions for presentation of the Report—first on the 19th February, 1981 up to the last day of the first week of the Sixth Session, *i.e.* the 21st August, 1981, the second on the 20th August, 1981 up to the last day of the first week of the Winter Session, 1981, *i.e.* the 27th November, 1981; the third on the 27th November, 1981 up to the last day of the first week of the Budget Session, 1982, *i.e.* the 19th February, 1982 the fourth on the 19th February, 1982 up to the last day of the penultimate week of the Monsoon Session, 1982, *i.e.* the 7th August 1982, and the fifth on the 5th August, 1982 up to the first day of the last week of the Winter Session, 1982, *i.e.* the 2nd November, 1982.

16. After receipt of the Government amendments, the Chairman requested the members to give notices of fresh amendments in the light of the Government amendments, if they so desired.

The Committee considered the Bill clause-by-clause *vis-a-vis* Governernment amendments and fresh amendments, etc., given notice of and moved by Members, at their sittings held on the 8th, 11th, 12th and 13th October, 1982.

17. At their sitting held on the 13th October, 1982, the Committee decided that two sets of memoranda/representations, etc. containing comments/suggestions on the Bill received by the Committee might be placed in the Parliament Library, after the Report had been presented, for reference by the Members of Parliament.

18. The Committee considered and adopted the Report at their sitting held on the 23rd October, 1982.

19. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

20. *Clause* 2.—The Committee have made certain amendments in this clause as explained below:

(i) The Committee note that under the provisions of sub-section (1) of the proposed new section 228A, the disclosure of the identity of the victim of certain offences, namely, assault on a woman with intent to outrage her modesty under section 354 and sexual offences, namely, rape and illicit sexual intercourse under the proposed new sections 376, 376A, 376B and 376C have been made punishable with a minimum imprisonment of one month extendable to two years and also with fine. The Committee feel that since the proposed legislation mainly deals with rape and illicit sexual intercourse, the offence under section 354, which is a minor offence and not so grave and serious as the offence of rape, need not be brought within its purview.

(ii) The Committee also note that the provisions contained in sub-section (1) of the proposed new section 228A provide for a minimum punishment of one month and the proviso thereof further empowers the court to impose a sentence of imprisonment for a term less than one month. The Committee find that these provisions are not in conformity with the provisions contained in section 354(4) of Cr.P.C. which provide that if the court imposes a sentence of imprisonment for a term less than three months, where the offence is punishable with imprisonment for one year or more, it shall record its reasons for awarding such a sentence, unless the sentence is of imprisonment till the rising of the court. The Committee are of the view that since the offence under sub-section (1) of the proposed new section 228A is punishable with imprisonment, which may extend to two years and fine, the court is bound to award a sentence of at least three months instead of the minimum of one month provided therein subject to the reasons to be recorded. The only exception under section 354(4) is the sentence till the rising of the court. But even under the proviso to sub-section (1) of the proposed new section 228A, the court, after recording special reasons, can award a sentence till the rising of the court. The Committee are, therefore, of the opinion that the proposed provisions relating to a minimum punishment of one month and the proviso empowering the court to impose a sentence of imprisonment for a lesser term than the minimum prescribed might be deleted.

Sub-section (1) of the proposed new section 228A, based on the suggestions made in parts (i) and (ii), has been amended accordingly.

(iii) The Committee feel that the expression "by any enactment for the time being in force"—made in sub-section (2) of the proposed new section 228A—which prohibits the disclosure of identity of the victim of an offence specified in such enactment is not desirable as it is vague and it is also apprehended that such an enactment might not come within the scope of the proposed legislation.

(iv) The Committee note that the provisions contained in sub-section (2) of the proposed new section 228A completely ban

the disclosure of the identity of the victim of the offences under the proposed legislation which at times might go against the interests of the victim herself. In certain cases, the Committee feel, publicity may be necessary for proper investigation and bringing the offenders to book. The Committee are, therefore, of the opinion that if it is in the interests of the victim, for the purposes of investigation and in order to ensure that the offenders do not go scot-free, the police officer investigating into the offence should be permitted to allow the printing and publication of the name or any matter which may make known the identity of the victim in good faith. Similarly, if the victim so desires, and in case the victim is dead or is a minor or is of unsound mind and the next of kin of such victim so desires, the publication may be made with the authorisation in writing of the victim or the next of kin. However, in order to ensure that the authorisation given by the next of kin of the victim is not misused, it should be made obligatory that such authorisation should be given only to the Chairman or the Secretary of any Welfare Institution or Organisation recognized for the purpose by the central or State Government.

Sub-section (2) of the proposed new section 228A, based on the suggestions made in parts (iii) and (iv), has been substituted by a new sub-section.

(v) The Committee are also of the opinion that in order to protect the interests of the victim, printing or publication of any matter relating to any proceeding before a Court with respect to an offence referred to in sub-section (1) of the proposed new section 228A, without the permission of the court, should also be made punishable.

A new sub-section (3) to the proposed new section 228A has been added accordingly.

(vi) Clause (b) of sub-section (2) of the proposed new section 228A relating to prohibition for the disclosure of any matter in relation to a proceeding held in a court *in camera* has been shifted to clause 4 which seeks to amend section 327 of Cr. P.C. relating to accessibility into the court premises (*Vide* para 22 below)

21. *Clause* 3.—The Committee have made certain amendments in this clause as explained below:

(i) The Committee feel that the expression 'free and voluntary' proposed to be added in clause Secondly of the proposed new section 375 is likely to cause confusion and may, in fact, suggest that the consent is vitiated. The consent has always to be free and voluntary as otherwise it is no consent. The Committee are of the view that, in terms of the provisions contained in section 90 of the Indian Penal Code, which expressly spell out the circumstances in which the consent is to be considered vitiated, the insertion of the said expression

is redundant. The Committee are, therefore, of the opinion that the expression 'free and voluntary' should be omitted.

(ii) The Committee note that the ambit of clause Thirdly of the proposed new section 375 has been made much wider than that of the existing one by inserting the words "or of any injury or by criminal intimidation as defined in section 503". The Committee feel that in the context of the offences relating to rape and illicit sexual intercourse to be dealt with in the proposed legislation, the addition of the expression "injury" is not necessary as it is already covered under section 90 of the Indian Penal Code. So far the expression "criminal intimidation" is concerned, it has been defined under section 503 of the Indian Penal Code which provides wider scope and as such it is not necessary. The Committee are, therefore, of the opinion that the expression "or of any injury or criminal intimidation as defined in section 503" should be deleted. The Committee are also of the opinion that the description contained in clause Thirdly, should be extended only to cases in which the consent is obtained by putting the victim or any person in whom she is interested in fear of death or of hurt.

(iii) The Committee note that the provisions regarding consent under a misconception of fact made in clause Fifthly of the proposed new section 375 are already covered by the provisions contained in section 90 of Indian Penal Code. The Committee feel that these provisions are, therefore, redundant and should be omitted.

(iv) The Committee feel that a woman, by reason of unsoundness of mind or intoxication or under the influence of any stupefying or unwholesome substance, is not capable of offering any effective resistance. The Committee are, therefore, of the opinion that the expression "or is unable to offer effective resistance" appearing in the description in clause Sixthly (new clause Fifthly) of the proposed new section 375 is not necessary and should, therefore, be omitted.

(v) The Committee feel that in a case where the husband and wife are living separately under a decree of judicial separation, there is a possibility of reconciliation between them until a decree of divorce is granted. Hence, the intercourse by the husband with his wife without her consent during such period should not be treated as, or equated with rape. Explanation 2 under the description of clause Seventhly (new clause Sixthly) of the proposed new section 375 has, therefore, been omitted.

The Committee are of the opinion that intercourse by the husband with his wife under such circumstances should be treated as illicit sexual intercourse and an independent provision for the purpose should be provided in the Bill [*vide* part (xiv) below].

(vi) The Committee feel that the punishment to the husband for having sexual intercourse with his wife, who is not under

twelve years of age, should not be equated with the punishment provided for the offence of rape but it should be a milder one. The Committee are of the opinion that the same punishment for such an offence, as has been provided under the existing provisions of the Code, namely imprisonment for a term which may extend to two years or with fine or with both, should be provided in the Bill.

Sub-section (1) of the proposed new section 376 has been amended accordingly.

(vii) The Committee feel that in view of the increasing incidents of rape offences committed by policemen by virtue of their position and authority, even though the Committee do not suspect that every policeman is a culprit, the provisions contained in clause (a) of sub-section (2) of the proposed new section 376 do not appear to be sufficient to cover all the areas to which their authority can extend. Besides, the expression "local area" used in this clause is quite vague. The Committee are, therefore, of the opinion that in order to ensure that all possible loop-holes are plugged so that the offenders do not escape punishment, any police officer, who commits rape within the limits of the police station to which he is appointed or in the premises of any station house or on a woman in his custody or in the custody of an officer subordinate to him, should be brought within the purview of the proposed clause.

Clause (a) of sub-section (2) has been amended accordingly.

(viii) The Committee feel that the provisions contained in clause (c) of sub-section (2) of the proposed new section 376 should not be confined only to the Superintendent or the Manager of a Jail, remand home or any other place of custody The Committee apprehend that any person on the management or on the staff of such institution can take advantage of his Official position and might commit a rape on any inmate of such institution. The Committee are, therefore, of the opinion that the scope of the provisions of clause (c) of Sub-section (2) should be extended to cover all persons on the management or on the staff of the institution.

Clause (c) of sub-section (2) has been amended accordingly.

(ix) The Committee note that the provisions contained in clause (d) of sub-section (2) of the proposed new section 376 have been extended to cover any person 'concerned with the management of the hospital' and confined only to women receiving treatment in that hospital. The Committee apprehend that the expression 'concerned with the management' might also cover those persons, who have no knowledge about the woman visiting a particular hospital, which is not desirable. The Committee feel that the scope of the proposed provisions should be extended only to those persons who are on the management or on the staff of the hospital. The

Committee also feel that the scope of the proposed provision should not only be confined to rape cases of a woman receiving the treatment but should be extended to cover the cases of rape of any woman in that hospital who might either be a casual visitor or might be attending to a patient in the hospital.

The existing clause (d) of Sub-section (2) has been substituted by a new clause accordingly.

(x) The Committee are of the opinion that in view of the increasing incidents of rape committed on minors, which is otherwise a heinous crime, any person, who commits a rape on a woman, who is under twelve years of age, should also be subjected to rigorous punishment.

A new clause (f) to sub-section (2) has been added accordingly.

(xi) The Committee note that in Explanation 1 to sub-section (2) of the proposed new section 376, "gang rape" has been defined as rape committed by three or more persons acting in furtherance of their common intention. The Committee feel that in a "gang rape" if one commits rape, all the other persons involved should be held responsible and be equally punished. As the number of persons is kept as "three or more persons" and if only one person commits rape, no other person will be covered. The Committee are, therefore, of the opinion that "gang rape" should be defined as "rape committed by one or more in a group of persons".

Explanation 1 to sub-section (2) has been amended accordingly.

(xii) Explanation 2 to sub-section (2) of the proposed new section 376 has been omitted consequent upon the amendment made in clause (c) of the said sub-section.

(xiii) The Committee note that in the original Bill, the definition of the term "Hospital" had not been given under clause (d) of sub-section (2) but was provided under new section 376C (now section 376D). The Committee feel that the definition of the term "Hospital" should be brought under clause (d) of sub-section (2) as Explanation 3 and its scope should be widened to cover cases of rape committed within the precincts of the Hospital as well as any other institution giving medical treatment.

A new Explanation 3 to sub-section (2) of the proposed new section 376 has been added accordingly.

(xiv) As already explained in part (v) above, the Committee feel that the sexual intercourse by husband with his wife without her consent, who is living separately under a decree of separation but has not ceased to be his wife, should not be equated with the offence of rape and the husband should be subjected to a milder punishment.

A new section 376A has accordingly been inserted in clause 3 of the Bill.

(xv) The Committee feel that the expression "takes undue advantage of his official position" used in the proposed new section 376A (now re-numbered as section 376B) might create complications and also might give room to controversy as to what constitutes "due advantage" as against "undue advantage". The Committee are, therefore, of the opinion that the expression "undue" should be omitted.

The Committee further note that the term "seduces" occurring in this section may give some loop-hole for the accused to escape. The Committee feel that in order to curb the probable escape, the word 'induces or' should be added before the word "seduces".

Proposed section 376A (now re-numbered as section 376B) has been amended accordingly.

(xvi) The Committee feel that the Superintendent or Manager of a Jail or remand home, by virtue of his authority and control over the inmates is likely to take advantage of his position in inducing or seducing the inmates for illicit sexual intercourse not amounting to rape. The Committee are, therefore, of the opinion that the provisions of the section 376B (now re-numbered as section 376C) should be confined to them only. The section has been amended accordingly.

The Committee are further of the opinion that in case any person holding any other office in such institution, by virtue of which he can exercise any authority or control over its inmates and commits such offence, should also be subjected to same punishment. Explanation 1 to this section has been added accordingly.

(xvii) The amendments made in the proposed new section 376C (now re-numbered as section 376D) are of consequential and clarificatory nature.

Clause 3 has been amended accordingly. The other amendments made in this clause are either of consequential, clarificatory or drafting nature.

22. *Clause* 4.—The Committee feel that all the allied offences proposed to be tried *in camera* are not of a serious nature and as such the *in camera* trial should be restricted only to cases of rape and illicit sexual intercourse with a view to provide facility of free atmosphere to expose secrecy. Hence, the *in camera* trial should cover offences falling under clause 3.

The Committee feel that although the proceedings of the court for trial of offences relating to rape and illicit sexual intercourse under the proposed new sections of the Indian Penal Code under clause 3 of the Bill are to be conducted *in camera*, it might become necessary at times, under certain circumstances, to allow any particular person to be present in the Court. The Committee are, therefore, of the view that the Presiding Judge should be given discretion to allow any particular person to be present in the court an application made by either of the parties.

Necessary amendments have been made in this clause accordingly and the other amendments made therein are of consequential nature.

23. *Clauses 5 and 6.*—The Committee feel that in view of the provisions for summary trial already made in section 350 of the Code of Criminal Procedure, 1973, there is no necessity for an express provision being made in the Bill providing for summary trail of an offence for printing or publishing the proceedings held *in Camera.* Clause 5 of the Bill has, therefore, been omitted.

Similarly, Clause 6 of the Bill, which is of a consequential nature, has also been omitted.

24. *Clause 5 (original clause 7).*—The Committee feel that the offence under the proposed new section 228A relating to disclosure of the identity of the victim of certain offences is not of such a serious nature as to make it non-bailable, as proposed and should, therefore, be classified as bailable.

The Committee are also of the opinion that offences relating to intercourse by a husband with his wife, not being under twelve years of age, under new section 376, and intercourse by a husband with his wife without consent during separation under new section 376A, should be made non-cognizable, bailable and triable by the Court of Session.

The Committee are further of the opinion that offences under the proposed new sections 376B, 376C and 376D should be made bailable and triable by the Court of Session. The Committee also feel that in order to avoid any misuse of these provisions under which the offences have been classified as cognizable, no arrest should be made without a warrant or without an order of the Magistrate.

Entries in the proposed new Schedule have been amended accordingly. The other amendments made in this clause are of consequential nature.

25. *Clause 6 (original Clause 8).*—(i) The Committee note that by this clause a new section 111A, providing for presumption as to absence of consent in certain prosecutions for rape, is proposed to be inserted in the Indian Evidence Act, 1872. The Committee feel that the appropriate place for the insertion of such a provision in the Indian Evidence Act would be after section 114 which provides for presumption of existence of certain facts in the prosecution of a particular case.

Proposed new section 111A has accordingly been proposed to be placed after section 114 and has been re-numbered as section 114A.

(ii) The Committee also note that clause (e) of sub-section (2) of the proposed new section 376 relating to rape on a pregnant woman has been excluded from the purview of the proposed new section 114A (original section 111A). The Committee feel that in a prosecution for rape on a pregnant woman if it is proved that the woman is pregnant, the court should have no option except to presume that she did not consent. The Committee are, therefore, of the opinion that clause (e) of sub-section (2) of the proposed new section 376 should also be brought within the purview of the proposed new section 114A.

(iii) The Committee apprehend that there is a possibility of the provisions made in the new section 114A (original section 111A) being misused unless in a prosecution for rape, it is proved that the sexual intercourse was by the accused only. The Committee are, therefore, of the view that in a prosecution for rape under sub-section (2) of the proposed new section 376 of the Indian Penal Code it should be made obligatory to prove that the intercourse was by the accused so that innocent persons are not falsely implicated.

The clause has been amended accordingly. The other amendment made in this clause is of a consequential nature.

26. *Clause* 1.—The amendment made in this clause is of a formal nature.

27. *Enacting Formula.*—The amendment made in the Enacting Formula is of a formal nature.

28. The Joint Committee recommend that the Bill, as amended, be passed.

GENERAL RECOMMENDATIONS

29. With a view to ascertain the views of the Cross-section of the Society on the provisions of the Criminal Law (Amendment) Bill, 1980 *vis-a-vis* the ever increasing incidents of rape and allied offences being committed on women, the Joint Committee invited suggestions from State Governments and non-official bodies. A large number of memoranda containing comments/suggestions were received by them. They also visited several places throughout the country. During the course of their visits, the Committee had formal discussions with both officials of State Governments and non-officials comprising the representatives of various Women's and Voluntary Social Organisations, Bar Councils, Bar Associations, individuals, etc.

30. During the course of their deliberations and examination of the Bill, under their consideration, the Committee were informed that apart from the rape and other sexual offences committed on women, there were other atrocities being committed on them for which there was inadequacy of law to protect them. In fact, apart from inadequacy of law, most women in our society are unable to muster enough physical strength themselves to offer effective resistance and are ill-equipped on account of biological inequality, to repel an attempt at such offences/atrocities even in self-defence. The consequences of these offences/atrocities on the victims have adverse psychological, physical and social effects. Various suggestions were offered to the Committee to deal with such offences/atrocities.

31. The Committee, after examining the provisions of the Bill *vis-a-vis* the suggestions/comments received, feel that although the provisions contained therein are insufficient to deal with all such offences/atrocities, to suggest comprehensive changes would not strictly fall within the scope of the proposed legislation. However, considering the importance and urgency of the subject-matter and keeping in view the welfare of the women-folk and to safeguard their legitimate interests,

the Commitee have decided to make certain general recommendations for consideration of the Government apart from the amendments suggested in the Bill.

32. The General recommendations have been made in two parts—first part contains recommendations for amendment of the Indian Penal Code and the second part contains recommendations made for amendment of the Code of Criminal Procedure, 1973. The Committee recommend that the Government might consider the feasibility of regulating the following matters either by amending the existing legislations or by processing suitable legislations, if necessary.

PART-I

(Amendments suggested to the Indian Penal Code)

I. *Right of private defence to a woman on molestation*

33. The Committee note with great concern that in the recent past there has been an increase in the molestation, harassment, etc. of women and the culprits, despite the existence of the Criminal Law, escape punishment. The Committee feel that outraging the modesty of a woman is a most cruel offence and need to be dealt with severely. The Committee are of the opinion that the offence of molestation might be equated with rape and brought within the purview of Section 100 of the Indian Penal Code relating to the right of private defence of the body extending to causing death.

II. *Punishment for rape on a physically and mentally disabled women*

34. The Committee are of the opinion that whoever commits a rape on the woman, who is completely helpless to defend herself on account of unsound mind, blindness, deafness, dumbness or is physically or mentally disabled, should be subjected to deterrent punishment. The Committee feel that a suitable provision to this effect might be inserted in Sub-section (2) of the proposed new Section 376.

III. *Punishment for rape on a woman under economic dominance.*

35. The Committee were informed that there have been innumerable cases, both in rural and urban areas, of the women being raped under economic domination, influence, control and authority of employers both in private and public sectors as well as under the employment of an individual. The Committee feel that such offences committed whether directly or indirectly by the employers should also be subjected to rigorous punishment and might be brought within the purview of the proposed new Section 376 of the Indian Penal Code.

PART-II

(Amendments suggested to the Code of Criminal Procedure, 1973)

IV. *Women not to be arrested after sunset or before sunrise.*

36. The Committee, during the course of their visits to various places in the country, were informed by the representatives of various Women's and Voluntary Social Organisations that on account of increasing incidents of offences being committed on women by the Police, whenever a

woman is arrested or called for interrogation at the police station or is detained therein, she feels insecure and always apprehends that the police will subject her to harassment and may even commit sexual offence on her.

37. The Committee feel that no woman, except in unavoidable circumstances, should be arrested after sunset and before sunrise. However, where such unavoidable circumstances exist, the police officer must, by making a written report, obtain the prior permission of his superior officer or if the case is one of urgency, he must, after making the arrest, report the matter in writing to his immediate superior officer without delay with reasons for arrest and also reasons for not taking prior permission.

38. The Committee are in complete agreement with similar recommendations made by the Law Commission in para 3.7 of their 84th Report and recommend that a suitable provision incorporating the above suggestions might be inserted in Section 46 of the Code of Criminal Procedure, 1973.

V. *Medical Examination of a man accused of rape*

39. The Committee were informed that even though a person accused for an offence of rape or other sexual offences is subjected to medical examination but it is generally seen that the medical examination is done in a cursory way and the report thereof is also not received in time. As a result, in several cases the prosecution fails and the accused person escapes punishment.

40. The Committee feel that when a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made, he should be sent without delay to the registered and qualified medical practitioner. Such medical practitioner should without delay examine such person and prepare a report recording the result of his examination with reasons for each conclusion arrived at and indicating complete particulars of the accused including marks of injury, if any, and chemical examination of semen or blood and/or its stains on the body or clothes of the person wherever possible. The medical report should also indicate the time of commencement and completion of the examination and the medical practitioner should without delay send the report to the investigating officer who should in turn forward the same to the Magistrate.

41. The Committee are of the opinion that as recommended by the Law Commission in para 4.7 of their 84th Report, an independent section 53A incorporating the above suggestions might be inserted in the Code of Criminal Procedure, 1973.

VI. *Medical examination of a rape victim*

42. The Committee were informed that in many cases apart from the usual delay, the medical report of a rape victim is also found to have been done in a cursory way and lacking in material particulars which are necessary for the successful prosecution of the case. The Committee feel that during the investigation, when a woman with whom rape is alleged to have been committed or attempted, it is proposed to get her

medically examined, such examination should be conducted by a registered and qualified medical practitioner with the consent of woman or of some person competent to give such consent on her behalf and she should be sent to such medical practitioner without delay. Such medical practitioner should without delay examine her and prepare a report indicating all the particulars mentioned in para 40 above including general mental condition of the woman and whether the victim was previously used to sexual intercourse. Apart from other particulars required to be furnished in the Report, it should also specifically record that the consent of woman or some person competent to give such consent on her behalf to such examination had been obtained.

43. The Committee are in agreement with the recommendations made by the Law Commission in para 4.10 of their 84th Report and recommend that an independent Section 164A incorporating the above suggestions might be inserted in the Code of Criminal Procedure, 1973.

VII. *Association of Social Welfare Officer in the investigation of offences against women and children*

44. The Committee are of the view that in order to ensure that cases relating to offences against women and children are investigated properly, it should be made obligatory on the part of any police officer investigating the case to associate a social welfare officer or any representative of a recognised social welfare organisation of the area with such investigations.

45. The Committee recommend that suitable provisions incorporating the above suggestions might be inserted as section 173A of the Code of Criminal Procedure, 1973.

VIII. *Compensation to a rape victim*

46. The Committee were informed that once it is known or proved that a particular woman has been raped, there are practically no chances of her being accepted by her family members or close relatives. In fact, the Committee feel, our society has not yet risen to that pedestal where the victims of rape, molestation, etc. are looked upon with sympathy and are given due sympathy, dignity and honour. As a result, in some cases such unfortunate victims of rape or other sexual offences become insane or commit suicide or become prostitutes against their will. The Committee are of the opinion that such victims should be awarded compensation sufficient enough to rehabilitate themselves in life.

47. The Committee recommend that suitable provisions incorporating the above suggestions might be inserted in section 357 of the Code of Criminal Procedure, 1973.

IX. *Custody and detention of a woman on arrest*

48. As already explained in para 36 above, when a woman is arrested and detained in a police station for interrogation, she feels insecure and has an apprehension of being harassed and even being raped by the police. The increasing incidents of such cases in the recent past are further strengthening the apprehension in the minds of such persons. There is, therefore, the need for elimination of their feeling of appre-

hension and of giving adequate protection against police misdeeds to women.

49. The Committee are, therefore, of the opinion that when a woman is arrested and there are no suitable arrangements for keeping her in custody in a place of detention exclusively meant for women, she should be sent to an institution maintained for the care, protection and welfare of children—licensed under the Women's and Children's Institutions (Licensing) Act 1956 or an institution recognised by the Central and the State Governments except in cases where she is required to be sent to a protective home or other place of detention authorised for the purpose under some special law.

50. The Committee recommend that an independent section 417B incorporating the above suggestions might be inserted in the Code of Criminal Procedure, 1973.

CONCLUSION

51. The Committee feel that till such time suitable legislations, based on the suggestions made above, are processed/enacted, the Government might consider the feasibility of issuing executive instructions to achieve the objectives.

NEW DELHI;
October 30, 1982
Asvina 8, 1904 (*Saka*).

D. K. NAIKAR,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

The Bill as reported contains certain provisions which will not be in the interest of fair trial and also to prevent such social offences like rape etc. in the present circumstances of our country where number of cases of gang rape and custodial rape are occurring. In my opinion, clause 2 of the Bill will not be conducive for the solution of the problem. This clause which makes printing and publishing the name or any matter which may make known the identity of the victim is vague and too wide and does not create the criminal liability strictly. Any matter connected with identity will give rise to different interpretations by various courts. It is likely to be misused also when publishing of any news will bring the journalists or the management of newspapers within the purview of the clause. It amounts, in fact, to blanket prohibition of publicity. It is undesirable and really contemplates criminalisation of public discussion and protest concerning rape and allied offences or of Indian women in general. Hereafter, the press will not dare to publish any news in such matters and take risk of committing an offence punishable with two years imprisonment. It is bound to facilitate persons in power, especially the custodians of offences and would assist the economically and politically more powerful people by this ban on public discussion. This will also be hinderance in the way of persons and public spirited citizens who wish to mobilise public opinion against default and investigation. Due to public protest and the campaign by the leading newspapers demanding strict penalties and action in such matters that the Government was required to bring this Bill and it appointed a Joint Committee to consider the subject from all aspects.

2. The change in the law should be to punish the criminals with deterrent punishment. But it is just the opposite. The very instrumentality which necessitated the re-examination of the law concerning rape is being punished under this law. Public participation in administration of criminal justice is healthy and conducive to equitable justice. This clause is counter productive. It is therefore desirable to leave the matter to the good sense of profession of journalism, existing law and Press Council. Any interference in the freedom of press and expression will be negation of democratic way of life. Freedom and liberty of individual is the very foundation of democracy. Any fetter or restriction on the freedom of press should be looked with caution and only in exceptional circumstances. Even from the point of view of justice to be given to victims of rape and social crimes, the restriction will not help the cause and advance the remedy. Some persons and organisations have given evidence in this regard before the Committee.

3. Section 228A of the I.P.C. provides a punishment of two years and also unlimited fine to journalists or the managements of newspapers. They are being treated like ordinary criminals under Section 354, sub-

clause (4) of the Code of Criminal Procedure, 1973. It is provided that when the conviction is for an offence punishable with imprisonment for a term of one year or more but the Code imposes sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence unless the sentence is of one of the imprisonment till the rising of the court. No court will take responsibility for giving reasons for a sentence of less than three months and, therefore, punishment under Section 228A, sub-clause (1) and sub-clause (3) will be minimum three months. In view of this legal provision, nobody will take risk of publishing the news of such offences and it will be difficult to find out the real culprits and punish the guilty in the absence of any news being published. There is no cogent reason for prohibiting the publicity at the investigation stage or making it punishable offence.

4. Under Clause 4 of the Bill, it has been provided that for such offences trial shall be conducted *in camera*. In the absence of any law the breach of clause 4 of publishing the proceedings in a trial *in camera* will be a contempt of court. Further, if the punishment is to be provided under this Bill itself for breach of clause 4, then the stringent penal provisions are not desirable. Even the Law Commission of India in its 84th Report has recommended only a fine up to Rs. 1,000 and has stated in the proposed Section 228A that there should be enactment which should make the publication in a court of law to be unlawful and penalty should be fine and not jail sentence.

5. I, therefore, suggest that section 228A, sub-section (1) be deleted and substituted by the following:

> "228A(1). Whoever prints or publishes the name of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is found to have been committed during the trial and when such printing and publication is not made in good faith or for public interest, shall be punished with a fine up to Rs. 1,000."

Section 228A, sub-section (2) be deleted. The explanation to section 228A and sub-section (3) be deleted and substituted by the following by re-numbering 228A(3) as 228A(2):

> "228A(2). Whoever prints or publishes any matter in relation to any proceeding held in a court *in camera* with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with a fine up to Rs. 1,000."

Explanation:

> "The printing or publication of the judgement of any court, including High Court and Supreme Court, does not amount to an offence within the meaning of this section".

6. As the law stands today, the names and the details of the victims as well as the accused can be published in the press unless the proceedings are held *in camera*. This is in view of the general rule about the reporting of judicial proceedings. It is a cardinal principle of criminal jurisprudence that trial shall be open. That is what is provided in

Section 327 of the Criminal Procedure Code. This is also made clear in the Supreme Court judgement in Naresh *Vs.* State of Maharashtra A.I.R. 1976 SC P.1 that only when the public is excluded from the audience, the privilege of publication also goes. It is well known dictum of law that "where secrecy begins justice ends." But in special circumstances and to avoid embarrassment from the glare of publicity, it is accepted proposition that the restriction on reporting of judicial proceedings can be made but such restrictions can only be imposed in very special circumstances. It is accepted fact that stigma attached to rape mars the future. Therefore, proceedings *in camera* should be held only when the victim so desires and, therefore, I suggest that clause 4 adding sub-section (2) should be re-worded and the following be added at the end of sub-section (2) before the proviso:

> "If the victim so desires, having made an application in writing in this regard."

7. Gang rape is a very serious offence and requires a deterrent punishment. It cannot be classified with other offences as is done in sub-section (2), under new section 376. In my opinion, ends of justice can only be met by providing death sentence or imprisonment for life and also liability for fine as is provided under section 302 I.P.C. for committing murder. Punishment provided in the proposed amendment is not adequate.

8. Before I conclude, I would like to mention that incidents of rape of minors are increasing in the last three years, particularly in the Union Territory of Delhi. It is our experience that criminal trial of these offences do not get priority. It is not sufficient merely that law is good. But there must be good enforcement machinery. It is essential, therefore, to have proper and speedy investigation in such cases and also adequate machinery to have expeditious disposal of cases. The Government should immediately take steps for the same directing the judiciary to have special courts for trial of such cases. Unless the culprits are tried expeditiously and deterrent punishment is given, this social offence will not be checked. Law, at present, is looked with immunity by such persons and inordinate delays in trials are making a mockery of justice.

9. With the above observations and this my note of dissent, I generally agree with the recommendations made by the Committee in other respects.

S. W. DHABE

NEW DELHI;
October 25, 1982
Kartika 3, 1904 (*Saka*)

II

Though I am agreeing with major recommendations of the Committee, I beg to differ in the following matters:

According to me, clause 2 of the Bill which seeks to insert section 228A of IPC should be deleted *in toto*.

This is a clause which provides for a bar on the disclosure of identity of the victim of certain offences, etc. The reasons stated are:

The publicity which mars the image of the victim of rape, makes further difficult her proper absorption in the society. She faces a sort of social boycott apart from her mental shock and agony.

Makes the investigation of the offence difficult.

With due respect, I beg to submit that none of the above two grounds stand to my reasoning. It is very unfortunate that a victim of rape, who should get sympathy from society gets a condemnation. Everybody knows that it was none of the victim's fault for the mishappening, but the old illogical conceptions of the society, deter the absorption of the victim in an hon'ble way into the society. But the question remains whether this hardship by the victim is experienced because of the publicity in the newspapers or otherwise, due to the incident of rape itself. When a rape takes place it hardly remains a secret so far as the family, the relatives and the small section of society is concerned. And it is this society which is not ready to accept her, whether there be a publicity in newspapers or not. Actually what is needed is the change in the thinking of the society. It will come only if an atmosphere of that type is created.

It will not be out of point to consider, as to what provoked the present legislation. It was the continuous occurrence of several rape cases against which so many women organisations and other social organisations raised voice so many newspapers also raised the issue and wide publicity of Mathura's case was one of the very important aspect. If this sort of publicity were not there, I am afraid there would not have been a pressure on the society and the legislature to bring an amendment of this type. Even the Houses of Parliament could not tolerate and rightly so, the delay caused in submitting the report of the Joint Committee.

Secondly the alleged difficulty in investigation also is far from the point. Actually it is the lethargy and carelessness on the part of the investigation officers which gives opportunity to the accused to escape. In fact the publicity brings pressure upon the machinery resulting in early and careful investigation.

Thirdly this is a departure from the report of the Law Commission. It has not proposed such sort of amending provision in its report. Therefore I strongly feel that the insertion of section 228A in the present form will hurt the cause instead of giving any relief and as such it should be deleted.

By this amending Bill three Acts namely Criminal Procedure Code, Indian Penal Code and Indian Evidence Act are being amended and I think, that is right but while doing so certain procedural matters are of importance. I feel that the immediate medical examination of both the victim as well as of accused must get legal sanction. The importance of colour photography, emphasised by Law Commission is also very valid. It is high time we should adopt these matters.

Again there are two basic points on which I would like to submit my views. The concept of rape upon one's own wife is rather foreign to our country. It may be improper that husband forces sexual inter-course upon his wife who is less than 12 years of age, but why this situation has arisen? The law though prohibits child marriages, the Indian society has not fully adopted to the law and as yet not thousand but lakhs of such marriages are taking place. It may be that such cases may be very negligible and the number may not be registered but such provision seems to be unwarranted in the present circumstances.

By providing section 114A, a departure has been made from the general rule of evidence. The original idea was that in cases of custodial rape, a presumption should be made, that is, if a victim says that she has not consented to the sexual intercourse, the burden of proving otherwise will be upon the accused. This (presumption) has been extended to a case where a woman is pregnant and an offence is committed, so it will be coming to consider that a woman who has become pregnant is aver to a sex act, and physiologically also there is no hindrance in a sex act, the medical science and the modern social thinking and the psychology of sex has established that there is nothing wrong in having a sex by a pregnant woman at least upto the first four-five months of her pregnancy. Therefore to put this sort of rape in the same category as that of the custodial rape, that is the cases, which are covered under section 376 further sub-section 2(a), (b), (c) and (d) will not be proper, and I feel that from the section 114A's ambit it should be taken away. Similarly a rethinking of the definition of rape *i.e.* section 375 of IPC also seems necessary. Particularly I want to draw the attention towards the part 'Sixthly' of the definition which says "with or without her consent" when she is 16 years of age. The reasoning is that the woman who is less than 16 years though gives her consent to sexual intercourse cannot be said to understand the implications of it and the effects of it. It may be that certain implications may not be realised by the woman and that may be in the case of even of an elderly lady but is it not a fact that in the modern society the knowledge of sex is available to boys and girls who just enter their teens. I do not have any study made of Indian boys and girls who are in the age group of between 13 and 16 and above regarding their sex experiences, while such figures are available in USA of their teen-aged youth and there the girls of 14-15 or those who have not completed 16 have quite a good sex experience. Some of them can be said to be past masters. It is a point

to be reconsidered whether in this background consent of a girl who has full experience and knows the enjoyment of sex, willingly has a sexual intercourse with a man, the man should always be condemned. A study of this subject is needed and I think an amendment of this clause based on that study will be in conformity with the change in our society. The Committee has made certain general recommendations which means that it further wants certain amendments in the Bill but because of the propriety in such amendment being made in the present amending Bill, those are not adopted. However, it is evident that they are the points to be taken care of as early as possible and as such, I must confess that the objects which the Committee have achieved are not total.

NEW DELHI;
October 26, 1982
Kartika 4, 1904 (*Saka*).

N. K. SHEJWALKAR

III

The Criminal Law (Amendment) Bill, 1980, as introduced in Parliament, betrayed clear marks of hasty and slipshod drafting. At the hands of the Joint Select Committee, the Bill has undergone considerable chiselling and refinement. It may not have become flawless; but it has to be accepted now as a well considered piece of legislation. Even so, there are some aspects of the majorty report with which we are unable to agree. Hence, this minute of dissent.

Our first and foremost reservation is with regard to clause 2 of the Bill, which prohibits the publication of "any matter which may make known the identity" of the rape victim. The clause is well-intentioned, but its principal result would be that the press would become severely constrained in so far as reporting of rape cases goes. It is not just the publication of the victim's name that is embargoed, but 'any matter' which could possibly point towards the victim. We feel that this sweeping embargo would make most pressmen hesitant about reporting rape cases.

Let it not be forgotten that this Bill itself is the result of a sustained press exposure of rape cases, particularly cases that took place inside police stations. Indeed, if this clause had been on the statute book earlier it is quite likely there would have been no such press coverage of the rape cases, no consequential public outcry for strengthening of the rape laws, and so, this Bill itself may not have been born. We may also point out that even without this statutory provision, pressmen, by and large, have been voluntarily avoiding mentioning names of rape victim.

When the Law Commission considered this matter, they felt that while at the trial stage reporting of proceedings should be statutorily porhibited by providing for a trial *in camera,* the manner in which a rape case should be reported at the investigation stage should be left "to the good sense of the journalistic profession, and to such provisions of the existing law as may be applicable". We fully endorse this view.

Clause 3 of the Bill deals with Section 375 of the Indian Penal Code, which defines 'Rape'. The amendments suggested by the Joint Select Committee take care of most shortcomings. But the Exception to section 375 reads: "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." This means that if the wife is less than fifteen years of age, the husband (who too may be just 15 or 16 years) is guilty of rape if he cohabits with her.

Child marriage is a widely prevalent social evil, and one with regard to which statutory sanctions are certainly called for. But these sanctions must necessarily be of a different nature. Extremely reprehensible though child marriage is, it surely cannot be put in the same category as rape. Besides, the real culprits in the matter of child marriages are not the bride or bridgroom but their parents. We,

therefore, favour an unqualified exception saying that "sexual intercourse by a man with his own wife is not rape."

A key provision of the Bill is the new section 114A added to the Evidence Act. This provides for a presumption about absence of consent on the part of the prosecutrix in certain specific cases of rape. The Joint Select Committee has inserted the words "by the accused" in the original draft. It has now to be proved that sexual intercourse was by the accused only. We have a slight doubt whether this addition would not give an unintended and undeserved advantage to persons charged with gang rape in which irrespective of which individual actually committed the rape, all those who acted concertedly as a group towards that end are equally culpable.

Besides suggesting amendments to the Bill, the Joint Committee has made several general recommendations, which even where they do not fall strictly within the purview of the Bill have a great bearing on the capacity of law to deal effectively with offences against women.

Quite a few of these recommendations stem directly from the Eighty-fourth Report of the Law Commission relating to Rape and Related Offences. Some of these, *e.g.* Medical Examination of Accused, and of Woman Victim, pertain exclusively to Rape. We feel, therefore, that these should have been incorporated in this Bill itself and should not have been left for subsequent legislation. Of course, follow-up legislation would be necessary in respect of matters of a general nature, such as right to self-defence in case of molestation, women not being arrested after sunset and before sunrise, custody and detention of women on arrest etc. Some of the other recommendations, such as, one relating to rape on a women under "economic dominance" are vague, and cannot be easily translated into law.

NEW DELHI;
October 27, 1982
Kartika 5, 1904 (*Saka*).

LAL K. ADVANI

IV

A. *Section* 228A of *the Indian Penal Code*:

The entire section 228A has to be reconstituted/reconstructed/ amended in view of the following reasons:—

(i) The bar as to the disclosure of identity has been imposed so far accused is concerned and not with regard to the women. The privilege is sought to be extended to the accused putting the woman/the molested woman to the great hazards of her social existence.

(ii) Controlled and restricted publicity is envisaged with regard to the accused but the molested woman has been put to open publicity subject to permission (but such permission sounds untenable).

(iii) The concept of the bar as referred to runs contradictory and discriminatory.

(iv) The bar has been imposed on the press to the jeopardy of their freedom and such bar is aimed to benefit the accused only, (though provision should not have been made beneficial to the culprit alone).

(v) The proviso to section 228A (2) (e) read with 'Explanation' is not tenable inasmuch as for being molested in future, a woman has to be registered beforehand with a recognised welfare institution or organisation (though such organisation is not at all physically present in all corners and parts of the country).

(vi) It has invited several prosecutions on alleged commission of offences under section 228A(1) & (3).

(vii) These further prosecutions have made the entire concept of amendment cumbrous and frustrated since those go to frustrate the concept of punishment of the accused only.

So, I suggest that 228A should be deleted since it is redundant and partial.

B. *Section* 376(2) *of the Indian Penal Code*:

Person on the management or on the staff of a Nursing Home requires to be made a party to the punishment like Hospital, since Nursing Homes are growing like anything in our country.

So I suggest.

"Nursing Home" should be incorporated after the word "Hospital" wherever such word appears in the Amendment Bill.

C. *Section* 114A of *the Evidence Act*:

The said amendment is to be deleted since there is every risk of got-up prosecution against a person.

So I am sending the above note of dissent and I hope that the Houses of Parliament will reconsider the proposed amendment of the Criminal Law (Amendment) Bill, 1980, inasmuch as the unfettered jurisdiction has been lent to the police personnel during investigation on the publicity issue.

CALCUTTA:
October 24, 1982
Kartika 2, 1904 (*Saka*).

AMAR PROSAD CHAKRABORTY

V

While we recognise the fact that compared to the earlier Bill (presented originally in the Lok Sabha) the present Criminal Law (Amendment) Bill, 1980 (as reported by the Joint Committee) is an improvement in many respects, we cannot fully agree with the Bill and the report. Hence, we submit the following note of dissent.

1. In clause 2 (page 1) of the Bill in the Section 228A(1) and at the end of this sub-clause we want two amendments to be inserted. Since these are self-explanatory we quote both:

(a) In the first line section 228 (1) (page 1) after the word "name" we want words "or any matter which may make known the identity" to be deleted.

(b) At the end of the sub-clause 228 (1) we want to add the following proviso:

"Provided that any publication made by newspapers or others with the object of bringing to light any case of rape or molestation of women, the investigation of which has been neglected or misdirected by the police or authorities and any complaint made to or any information lodged with the police and the authorities in relation to the offences under sections 354, 376, 376A, 376B, 376D, shall not constitute disclosure within the meaning of this section".

Every body knows from experience that for the last several years the publication in newspapers and agitations by women's and other organisations did play a big role in unveiling certain cases of rape particularly on poor women in far off places (like the recent Siswan incidents and many other incidents in the past). Without that probably even the cases would not be registered in certain places; it is particularly true when the allegations are against police personnel or certain other influential persons enjoying the backing of the local police.

The present Bill of course has relented from the earlier *blanket* ban on publication of "the name and any matter which may make known the identity" of the victim by providing among others that publication with written consent of the victim will not be punishable. Even then we think that written permission from the poor women in far off places may not be always practicable and in fact the publication itself may help these women.

It may be argued that in our society, the rape victims need some protection in regard to publicity because of the stigma attached to the victims of rape. While we do agree that some protection in this regard for general cases may be necessary that is why we are not averse to some restriction on publicity with regard to the name of the victim, but we feel that restriction extending upto "any matter which may

make known the identity" will be too sweeping and it may in many cases scare away the newspapers from publishing even a case like that in Siswan, which will be counter productive. It will also handicap women's organisations in carrying out necessary activities. Noting that generally publicity is given or agitation conducted not in all cases, only in cases where the authorities concerned neglect the registration, investigation etc., we think that proviso proposed by us should be clearly stated in the Bill so that the rape victims may have avenue to justice.

2. We do not agree to the deletion of the Explanation 2 in the clause 3 of the old Bill, *i.e.* "A woman living seperately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this section."

It may be argued that intercourse with the "wife" even if under judicial separation without consent should not be considered rape in the interest of possible reconcilliation. But we feel that firstly forcing the women is not the best method for reconcilliation, secondly it is frought with danger for the women because if these would lead to pregnancy due to that intercourse the woman would face great problem.

In clause 3 of the Bill under the new section 376(1) of the IPC sub-clause 2(a)(i), where the circumstances of rape by a police officer is being defined, though the present Bill is an improvement, even then we feel that it is inadequate. We want another sub-clause to be added saying "or in any area where he is known to be a policeman".

Our reason is that whoever would know (particularly poor and village women) that a particular person is a policeman would be likely to feel afraid of him which will place him in a position of domination irrespective of whether she is in the circumstances described in the Bill.

We are highly concerned about the cases of rape perpetrated taking advantage of economic domination or power. This question has been partly dealt with in the general recommendation of the Joint Committee report (para 35). But we think that this Bill itself should have taken care of this problem and there was ample scope for that. We want that in the new section 376 (1) sub-section 2 of the IPC after "gang rape" another concept be added either through the words "(g) commits power rape" or through the words "(g) commits rape on a woman on whom she has economic domination directly or indirectly with an explanation later saying.

"*Explanation* 4.—Where a woman is raped under economic domination or influence or control or authority which includes domination by landlords, officials, management personnel, contractors, employers and money-lenders either by himself or by persons hired by him, each of the person shall be deemed to have committed power rape (or rape on the strength of economic dominance) within the meaning of this sub-section".

We feel that in such cases, the guilty should undergo as heavy a punishment as in the cases of custodial rapes and gang rape. Moreover, in these cases the victim should also enjoy the benefit of the proposed new section 114A of IPC where presumption as to the absence

of concept is given in favour of the victim. Both provisions were possible in the present Bill itself instead of leaving it to some future legislation. Moreover we note that the general recommendations regarding this (in the para 35 of the report) talks only of economic domination, influence, control and authority of only the "employer" and not of other categories mentioned above in our suggested Explanation 4 quoted above. Therefore, we feel that even the general recommendation of the report is in this respect inadequate.

5. About the provision of compulsory '*in camera*' trial of the rape cases made in the Bill (clause 4) we want that it should be provided for "if desired by the victim". We feel that though generally the rape cases should be held *in camera* and that is in the interest of the victim, but there may be cases where publicity is needed for justice and for that reason that publicity would be in the interest of the victim in which case that scope should remain open.

6. About the necessity of association of a social welfare officer or any representative of a recognised social welfare organisation the Report in para 44 and para 45 (in the section under General Recommendations) has recommended that in future a new section 173A be inserted in Cr. PC. 1973. But we feel that the association of a social welfare officer, or any representative of a social welfare organisation or any women's organisation of the area in the process of investigation, as well as the right of such organisations to prosecute simultaneously with the State; and in case police authorities do not think it necessary to prosecute, the right of such organisations to prosecute despite that should have been provided in this very Bill.

7. The Law Commission recommended and most of the women's organisations also maintained that the past sexual life of the victim should not be adduced in the evidence or questions relating to that should not be put in the cross-examination of the prosecutor in a trial of a rape case. There is scope for amending the Indian Evidence Act, 1872 to this effect by inserting a sub-section (3) in the section 146 of the said Act to this effect. This has found no place either in the Bill or in the General Recommendations made in the Report. This is essential for fair trial.

8. Last, but not the least, is the question of amending the Cr. P.C., 1973 with regard to the arrest and detention of women after sunset and sunrise, with regard to prompt and effective medical examination of the victim and the accused in rape cases and several other matters referred to by the Law Commission about the investigating stage in crimes against women and children are extremely urgent if the cases are to be successfully conducted. It is a pity that the entire investigative process has been left out of the purview of the present Bill. Some are now sought to be done through executive orders. In our opinion that is totally inadequate and are often violated. So the recommendations of the Law Commission pertaining to the investigation should have found a place in this Bill itself.

NEW DELHI;
October 28, 1982
Kartika 6, 1904 (*Saka*).

GEETA MUKHERJEE
SUSEELA GOPALAN

VI

1. With reference to clause 2, Section 228A(1) which refers to disclosure of identity of the victim of certain offences etc. it may be noted that the punishment referred to which may extend upto 2 years is rather harsh and would amount to deliberate stiffling of the press. This Bill itself is the product of the sensational disclosure and continuous tirade made by the Press against such gruesome offences. Since a social change of attitude and protection to the weak and poor is necessary, inclusion of this would be detrimental for the very purpose of this Bill. But to protect the interests of the victim and the spirit with which this was included a mere fine should suffice our purpose.

2. In clause 3 after section 375 "exception" brings upon restriction of age for a man to have sexual intercourse with his own wife.

As the Hindu Marriage Act and other Marriage Laws which already exist, provide a minimum age for the marriage of both men and women. The remedy to this lies in the effective and proper implementation. Our existing Marriage Laws should be guided by the introduction of a uniform Civil Marriage Code. It is not proper to include this as this pre-supposes that the existing Marriage Laws are being flagrantly violated and makes a mockery of the existing Marriage Laws. This exception may therefore, be excluded.

Section 376 (2) also refers to a simllar lacuna which only exposes the hollowness of our existing laws, which are far from being implemented.

NEW DELHI;
October 29, 1982
Kartika 7, 1904 (*Saka*).

V. KISHORE CHANDRA S. DEO

VII

I regret that I am unable to support some of the clauses in the Bill as reported by the Joint Committee.

Clause 2 which creates the new section 228A is, in my opinion, unnecessary and productive of public mischief in several cases. Its wide phraseology would even cover the case of a father who complains of slack or corrupt investigation in the matter. This matter, in my opinion, ought to be left to rules of ethics to be evolved by the Press Council of India.

With reference to the proviso and explanation to clause 2, sub-clause 2(c), I am in disagreement because the provision suggested is impracticable and it is difficult to implement the same. It is well neigh impossible to set up recognised Welfare institutions throughout the country even at District Levels. I feel that unless it is possible to set up institutions at village level in the country it would not be possible to implement the provision and as such the object of this provision could not be achieved.

In clause 3 which introduces the new section 375, I am unable to subscribe to the wide scope of the fifth clause. Cases of self-induced intoxication ought to be excluded from this clause. In modern society and in even some backward societies where drink and other intoxicants are freely consumed, false charges of rape can easily be brought. In conceiveable cases it may be entirely difficult for the male to apprehend whether or not the female is unable to understand the nature and consequences of sexual intercourse. I am also unable to ascribe to sixthly in the same clause. In tropical countries, girls mature somewhat early. The Muslim religion permits marriage on puberty. To outlaw all sexual intercourse under the age of 16 would lead to other evils which society ought not to encourage.

I suggest that the exception to sixthly and the proposed section 376 require to be modified. Correct legislative policy requires that the age of marriage itself should be raised. To permit marriage at a younger age and then prohibit sexual intercourse between man and his wife is patently absurd in modern conditions.

The explanation to section 375, in my opinion, needs a serious consideration. Many times in courts attempt is made to show that the offence of Rape is not proved in as much as the penetration, which is the ingredient of the offence is not proved; taking advantage of this provision many questions are asked to the prosecutrix which put her to humiliation and in order to avoid this humiliation she gives certain admissions which are beneficial to the accused as a result of which the accused gets an acquittal. Therefore, I suggest that instead of the present explanation the explanation should be defined as follows;

'Physical contact of sexual organs with intent to commit rape is sufficient to constitute the offence of rape.'

In my opinion section 376(2) (a) requires to be modified by including Police Officer in uniform within and outside his jurisdiction, in this clause.

In my opinion, the explanation 1 to section 376(2) defining "Gang Rape", in clause 3 of the Bill need modification or clarification. There may be cases where a group of 5 persons would assault a woman out of whom 2 actually commit intercourse and the other 3 assist by holding hands or feet of the victim. It is likely that amongst these three a woman may be a participant. But, in view of the definition of rape given in section 375 a woman cannot commit rape and as such a woman actively assisting to commit the offence of "Gang Rape" cannot be convicted for the same offence, but she can at best be convicted of some other less serious offence. It is necessary that such cases also should be covered by the definition of "Gang Rape."

I am unable to support clause 6 of the Bill which creates a new presumption of consent under the proposed Section 114A of the Indian Evidence Act. The very facts which are required to be proved before the presumption arises will often lead the court to infer want of consent on the part of the woman. Such a presumption should be allowed to be raised by the court as a matter of common sense and as a part of intelligent appreciation of evidence. The "shall presume" presumption may well prove too harsh on the facts of the particular case and lead to conceiveable miscarriage of justice. The same result can be achieved by adding an illustration to section 114 of the Evidence Act leaving it free to the court to raise a presumption where the facts warrant it.

RATNAGIRI;
October 24, 1982
Kartika 2, 1904 (*Saka*).

BAPUSAHEB PARULEKAR

VIII

I am putting this Note of Dissent mainly to record my dismay at the apathy of the Government in preparation and processing of this Bill.

1. Alarming increase in the incidents of rape and of suffering of women in the country has been best indicated by the Chief Minister of Madhya Pradesh when he told the Assembly that in his State on an average "one woman was raped every eight hours, one woman committed suicide every twelve hours and one woman was murdered in family dispute every third day in 1981". Horrid stories of rape and crimes against women have become regular features of the national dailies; a Baghpat, a Deoli, a Siswa, a Mathura case, invited heated discussions in the Parliament and a casual remark from the Home Minister that "it is a global phenomenon" and that "rape has been there since the days of Mahabharat". Sometimes an incident of rape by a landlord or by a lord of the law and order in a police station stirred an agonised agitation at the local levels. But through years of official apathy, lack of public concern and inadequacies of the statutory provisions, the crime rate had spurted merrily, and the criminals, high and low, went scot-free after delayed and despirited action of the law enforcement machinery of the State. The figures of rape cases, convictions and acquittals in some States, are given below as per details supplied to this Committee:

GENERAL CASES OF RAPE

(Total for the years 1978, 1979 and 1980)

State	Cases Reported	Cases Resulted in conviction	Cases resulted in acquittals
Gujarat	241	47	163
Haryana	245	68	135
Himachal Pradesh	89	22	35
Karnataka	258	30	76
Kerala	29	32	95
Maharashtra	63	7	24
Punjab	43	81	158
West Bengal	1516	124	731
Delhi	202	27	58

It is to be borne in mind that the above-mentioned figures did not reflect the reality of the situation as large number of incidents of rape

evidently remain unreported, unregistered uninvestigated and conveniently out of record. But the Table in a way indicates the low percentage of cases resulting in conviction even among the reported cases.

2. The great deal of public discussion and protest that followed the judgement of the Supreme Court in the case of Tukaram *vs.* State of Maharashtra (known as 'Mathura case') made the Union Government request the law Commission for a special study of the subject. The Law Commission submitted its 84th Report on 24th April, 1980. The Home Minister gave an assurance on 19th June, 1980 that a comprehensive legislation to amend the laws relating rape would be brought during that session itself. It is understood that comments and suggestion were obtained in July, 1980 from the State Governments. But it is highly regrettable that the Criminal Law (Amendment) Bill, 1980, as introduced by the Parliament and referred to this Joint Select Committee, belied all expectations and the purpose of the efforts initiated by the Union Government. The hurried piece of legislation did not do justice to very many good recommendations made by the Law Commission and valuable suggestions given by the State Governments, by the Women Organisations and by eminent jurists. After consideration of all the memoranda submitted and oral evidences given, this Committee went into hybernation for some months as the Government could not make up its mind on the amendments to be proposed/accepted. When the Government amendments came finally, every clause in the Bill got amended radically. Truly the Government had an open mind—too much of an open mind that nothing concrete was there earlier.

3. I am afraid that the result of clause 2 of the Bill in addition to Section 228A may not, in the long run, benefit the victims, but give protection to the accused and depraved criminals from effective publicity and social protest. While it is desirable that the identity of the victim should be protected from unpleasant publicity, the form of clause 2, even as amended, may put a blanket ban on any press coverage of the incident and all efforts to mobilise public opinion and to organise social protest will be greatly hampered, if not ruled out. We should not forget that this very Bill itself was the result of wide press reporting and the public demand arising out of specific cases of rape.

4. Apart from the amendments suggested to the clauses of the Bill, the Committee have given some general recommendations suggesting comprehensive changes in the existing legislations relating to rape. Some of these suggestions were already there in the Law Commission's Report; had the Government shown greater concern and attention to the problems and the suggestions on the subject matter they should and could have brought a comprehensive Bill instead of leaving some vital aspects for another legislation.

5. Rape is not merely a criminal assault, it is an assault on her life, on her soul, on her social respectability. For no fault of hers, a woman is suddenly deprived of her inherent right to lead a normal and happy life; she is doomed to suffer in silence and only death can free her from the stigma and the agony. Apart from fixing deterrent punishments in the cases of rape, Government should take a wider view of the plight of the victims and provide for statutory and administrative measures to rehabilitate the poor women.

6. I am not sure whether the Bill as reported by the Joint Select Committee will be considered and passed in the current session of Parliament, whether it should wait for the Budget Session or for the Monsoon Session next year. I feel that considering the urgency and importance of this legislation, the Government could have provided sometime in the current Session itself for passing of the Bill. But we should not forget that for a victim of rape, budget of her life is taxed heavily with misery and humiliation and rendered perpetually deficit; there is no monsoon session in her life, excepting for the rain of tears from her own eyes; she has to face a long winter session of frozen agony and barren future.

NEW DELHI;
October 29, 1982.
Kartika 7, 1904 (Saka).

ERA SEZHIYAN

BILL NO. 162-B OF 1980

THE CRIMINAL LAW (AMENDMENT) BILL, 1980

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. This Act may be called the Criminal Law (Amendment) Act, 1982. Short title.

45 of 1860. 2. In the Indian Penal Code (hereinafter referred to as the Penal Code), after section 228, the following section shall be inserted, namely:— Insertion of new section 228A.

'228A. (*1*) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. Disclosure of identity of the victim of certain offences, etc.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the Chairman or the Secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, "recognised welfare institution or organisation" means social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine

Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.'.

Substitution of new sections for sections 375 and 376.

3. In the Penal Code, for the heading *"Of rape"* occurring immediately before section 375 and for sections 375 and 376, the following heading and sections shall be substituted, namely:—

'Sexual offences

Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

Secondly.—Without her *** consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

* * * * *

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.***

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

* * * * *

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment for rape.

376. (*1*) Whoever, except in the cases provided for by sub-section (*2*), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(*2*) Whoever,—

(*a*) being a police officer commits rape—

(*i*) within the limits of the police station to which he is appointed; or

(*ii*) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(*iii*) on a woman in his custody or in the custody of a police officer subordinate to him; or

(*b*) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(*c*) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of the institution; or

(*d*) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(*e*) commits rape on a woman knowing her to be pregnant; or

(*f*) commits rape on a woman when she is under twelve years of age; or

(*g*) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

* * * * *

Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Intercourse by a man with his wife during separation.

376A. Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Intercourse by public servant with woman in his custody.

376B. Whoever, being a public servant, takes *** advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Intercourse by superintendent of jail, remand home, etc.

376C. Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution *** takes*** advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Explanation 1.—"Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in *Explanation* 2 of sub-section (2) of section 376.

Intercourse by any member of the management or staff of a hospital with any woman in that hospital

376D. Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Explanation.—The expression "hospital" shall have the same meaning as in *Explanation* 3 of sub-section (2) of section 376.'.

2 of 1974

Amendment of section 327.

4. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Criminal Procedure Code), section 327 shall be renumbered as sub-section (1) of that section and after it, as so numbered, the following sub-sections shall be inserted, namely:—

"(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code shall be conducted *in camera*:

45 of 1860

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court"

* * * * *

Amendment of the First Schedule

5 In the First Schedule to the Criminal Procedure Code, under the heading "I.—*Offences under the Indian Penal Code*",—

(*a*) after the entries relating to section 228, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"228A	Disclosure of the identity of the victim of certain offences, etc.	Imprisonment for two years and fine.	Cognizable	Bailable	Any Magistrate
	Printing or publication of a proceeding without prior permission of court.	Ditto	Ditto	Ditto	Ditto.",

(*b*) for the entries relating to section 376, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"376	Rape	Imprisonment for life or imprisonment for ten years and fine.	Cognizable	Non-bailable	Court of Session.
	Intercourse by a man with his wife not being under twelve years of age.	Imprisonment for two years or fine or both.	Non-cognizable	Bailable	Ditto.
376A	Intercourse by a man with his wife during separation.	Imprisonment for two years and fine.	Ditto	Ditto	Ditto.
376B	Intercourse by public servant with woman in his custody.	Imprisonment for five years and fine.	Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate).	Ditto	Ditto.
376C	Intercourse by superintendent of jail, remand home, etc.	Ditto	Ditto	Ditto	Ditto.
376D	Intercourse by manager, etc., of a hospital with any woman in that hospital.	Ditto	Ditto	Ditto	Ditto.".

Insertion of new section 114A in Act 1 of 1872.

6. After section 114 of the Indian Evidence Act, 1872, the following section shall be inserted, namely:—

Presumption as to absence of consent in certain prosecutions for rape.

"114A. In a prosecution for rape under clause (*a*) or clause (*b*) or clause (*c*) or clause (*d*) or clause (*e*) or clause (*g*) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.". 45 of 1860.

AVTAR SINGH RIKHY,
Secretary.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1982